I. BELLSOUTH'S CHANGE CONTROL PROCESS IS STILL FLAWED AND FAILS TO COMPLY WITH NONDISCRIMINATION REQUIREMENTS.

- **BellSouth has not resolved the change control problems noted by Commission in prior orders.**

  In the *Georgia/Louisiana 271 Order* (¶ 193), the Commission directed BellSouth to work collaboratively with CLECs in the change control process on prioritization issues, the provision of timely change control information to CLECs, and the timely implementation of changes. In the *Five State 271 Order* (¶ 178), the Commission noted that "many of the same problems with BellSouth's adherence to its change management process . . . still exist." DOJ voiced similar concerns in its Evaluation (at 7-9) about the adequacy of BellSouth's change control process. Clearly, these change control problems still have not been addressed and remedied.

- **BellSouth fails to adhere to CLECs' prioritization of change requests.**

  BellSouth has unilaterally included four BellSouth-initiated change requests in what is supposed to be a *CLEC* production release for 2003, without the consent of the CLECs -- even though, under BellSouth's "50/50" plan, its own change requests may be included in a CLEC production release only with the CLECs' consent. In addition, BellSouth implemented two change requests the CLECs had given low priority in May 2002 well in advance of the September 2002 prioritization meeting, presented both to the CLECs for prioritization at the September meeting during which the CLECs ranked them 13th and 14th, and then two weeks later advised the CLECs that both had actually already been implemented.

- **BellSouth fails to provide sufficient resources to implement CLEC change control requests.**

  Delay of Release 11 is simply latest in series of events evidencing BellSouth's failure to consult with CLECs, failure to implement change control in a timely manner (second delay for Release 11), and failure to provide information on capacity to allow CLECs to participate in process in meaningful manner.

  Contrary to its promises, it is clear that BellSouth will not devote sufficient resources to the implementation of CLEC-desire change requests, or implement such requests in a timely manner, without substantial regulatory pressure -- and even then, BellSouth will achieve only partial compliance with the regulators' mandate. The 2003 Release Plan will not implement 15 existing prioritized change requests, 8 requests that will be prioritized in December, or any currently in "new" status or that will be submitted in the future.

  BellSouth committed to solve the service outages associated with UNE-P migrations by eliminating the two separate "D" and "N" orders that caused outages when not processed in the proper sequence and replacing them with a single "C" order. After introducing single "C" order over several months, it turns out that BellSouth's single "C" order applied only to full migrations of service; for partial migrations, BellSouth continues to use two separate orders, and AT&T customers are still losing service as a

result. BellSouth at no time told this Commission, the Georgia and Louisiana PSCs that ordered BellSouth to implement the single "C" order, or the CLEC community that it was only partially addressing the problem.

- **As a result of BellSouth's deficient performance under the change control process, the Commission should require that BellSouth provide quarterly reports to the FCC on its change control performance:**

  Performance against SQM metrics for each month of the quarter with explanation for each metric not met and action plan to achieve objective compliance.

  Description of utilization of capacity, including a comparison of forecast versus actual utilization in the aggregate, by software release, and by the individual change implemented.

  Forecast plans for newly announced software releases.

  Changes to previously forecast plans, and the reasons for such changes.

  BellSouth should also be required to fix the single "C" ordering process so that it will apply to both total and partial migrations and implement this change using its own resources, without diverting resources that it has dedicated to the implementation of pending CLEC change requests.

II. BELLSOUTH'S DATA REPOSTING POLICY IS INAPPROPRIATE AND DEMONSTRATES THAT ITS DATA ARE UNTRUSTWORTHY

- **BellSouth's unilaterally developed reposting policy allows BellSouth to shield errors in its data from disclosure.**

  The reposting policy in place at the time of the Application completely eliminates numerous measures ordered by Florida and Tennessee Commissions from error correction, including several measures included in the penalty plan. Even under BellSouth's revised reposting policy, BellSouth will not recalculate performance results for a substantial number of measures that are not in the SEEM.

  The revised reposting policy is fundamentally flawed because it relies on out of parity conditions in the MSS reports to trigger SEEM recalculations. The statistical methodologies in the MSS reports and SEEM are not the same and can generate different results.

  DOJ (Eval. at 9-10) agreed that the reposting policy was flawed in not defining precisely when data would be reposted and in allowing BellSouth to determine the scope of the policy.

  The reposting policy does not address CLEC specific reports.

  BellSouth's policy does not correct errors for out of parity reports with less than 2% change for benchmark measures of .5% z-score change for parity measures, or reports with less than 100 transactions.

The reposting policy violates the Florida Commission's Performance Measures Order that found that BellSouth should provide complete and accurate performance reports and that penalties should be assessed whenever BellSouth fails to do so.

- **In light of these problems with BellSouth's reposting policy, this Commission should take the following steps:**

  Require that BellSouth correct and re-state all erroneous performance reports so that CLECs and regulators have accurate and reliable performance data to monitor BellSouth's performance and to compensate CLECs for penalty plan violations. As the DOJ noted, BellSouth should also be required to provide the reasons for the restatement, because without the reasons for the nature and cause of the error, regulators cannot easily ascertain its significance.

  Require that BellSouth pay the CLECs and the states for any penalties that may be due as a result of any previously reported erroneous performance reports.

III. BELLSOUTH'S $200 PER DAY PER LINE EXPEDITE CHARGE MUST BE STRICKEN AND REPLACED WITH COST BASED AND NONDISCRIMINATORY RATE.

- **The expedite charge of $200 per day per line is discriminatory and not cost based. AT&T is willing to pay a reasonable, cost-based expedite charge, but BellSouth's $200 per day per line is nothing more than a business impediment created by BellSouth to increase CLEC costs.**

  There is absolutely no cost basis for this charge, and no reason that expedite cost should be higher because of the number of lines or the number of days at issue. Expediting a 5- line order by 5 days costs $5000.

  Expediting an order is part and parcel of ordering and provisioning, which the Commission clearly found to an OSS function and therefore a UNE. *Local Competition Order,* ¶¶ 312, 516-17; *UNE Remand Order*, ¶ 424. As a result, it is clearly subject to cost-based ratemaking and nondiscrimination requirements of Section 251(c)(3).

  BellSouth's response that satisfaction of provisioning interval standards is sufficient performance on its part and that expediting orders is not subject to nondiscrimination requirements is plainly wrong. If BellSouth expedites orders for its own customers (which it clearly does), then it must provide same service capability on nondiscriminatory basis to CLECs. If BellSouth charges its own customers $200 per day per line to expedite, then the charge is nondiscriminatory. It clearly does not, and therefore the charge is discriminatory.

  BellSouth totally misreads the AT&T/BellSouth interconnection agreement in claiming AT&T "agreed" to the charge. BellSouth cites to the provision in "Exhibit A" claiming that AT&T agreed to pay the amount set forth in the "applicable BellSouth tariff," but that provision appears only in the attachment relating to DUF rates and has nothing to do with ordering or provisioning. The "applicable BellSouth tariff" on which BellSouth relies (Tariff F.C.C. No. 1, Section 5) is its federal access

tariff, which specifically states that it is limited to specified access services. This tariff has nothing to do with expediting UNE orders.

- **The Commission should require BellSouth to eliminate the $200 per day per line charge and develop a cost-based expedite charge.**

IV. BELLSOUTH SHOULD NOT BE ALLOWED TO DOUBLE COUNT INFLATION.

- **Florida Commission committed clear error in allowing double count of inflation in both the cost of capital and in the valuation of the asset base, which allows BellSouth to over recover its costs. This is matter of mathematics, not judgment.**

  BellSouth can recover inflation either through the use of a nominal cost of capital (which includes inflation) or through use of asset values adjusted for inflation. Using both methods, however, double counts inflation and allows BellSouth to over recover its costs. The impact of the double count is approximately 1%-5% on various UNE rates.

  Disallowance of double count of inflation is covered in both standard regulatory texts (Goodman, The Process of Ratemaking at 599) and in D.C. Circuit decision *Farmers Union Central Exchange, Inc.* v. *FERC*, 734 F.2d 1486, 1525 (D.C. Cir. 1984).

  BellSouth's response that rates are calculated every three years confuses cost incurrence (which occurs once for long-lived assets) and cost recovery (which may provide for establishment of rates every three years or some other on periodic basis). Exhibit 1 to Klick/Pitkin Reply Declaration demonstrates mathematically that BellSouth over recovers its costs if it uses nominal rate of return and then uses asset value that include estimate for future inflation.

  This is important issue for this proceeding and future state proceedings, and states would benefit from Commission guidance on this point.

- **Given the clear error in mathematical computation made by the Florida Commission on the issue of double counting inflation, this Commission should find that BellSouth cannot use both the nominal cost of capital and an inflation-adjusted rate base in calculating UNE rates.**

V. THE $160 HOT CUT SHOULD BE REPLACED WITH A COST-BASED RATE.

- **BellSouth's rate for SL-2 loops overstates BellSouth's costs and results in a competition-inhibiting $160 charge for hot cut. This overstated rate prevents AT&T from migrating UNE-P business customers to UNE-L service.**

  AT&T purchases SL-2 loops because they allow for testing and specified cut over time, and provide design layout record. The less expensive SL-1 loops offer some of these options, but only at an extra charge. Due to ongoing problems with the hot cut conversion process, testing is necessary to ensure that conversion goes smoothly. Specified cut over time is also necessary so that the cut over occurs during a time that the customer's business will not be adversely affected. AT&T cannot afford to have

business customer lose dial tone, as the telephone is the economic lifeline for many small businesses.

AT&T has proposed a bulk conversion process that allows for testing and real time correction of problems.

- **Given BellSouth's overstated $160 rate for SL-2 hot cuts, the Commission should require that SL-2 loop hot cut charge to be reduced to cost-based level.**

  AT&T will consider use of SL-1 loops if BellSouth guarantees that the UNE-P customer's existing loop will be used for conversion to UNE-L service. AT&T would still require the use of SL-2 loops at cost-based rates in many cases due to testing, cut over, and design layout record requirements.